

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

James A. Day, Jr.,

Case No. 1:08 CV 212

Petitioner,

MEMORANDUM OPINION
AND ORDER

-vs-

JUDGE JACK ZOUHARY

Warden Konteh,

Respondent.

The Court has reviewed the Report and Recommendation of the Magistrate Judge (Doc No. 17) filed September 2, 2009. Under the relevant statute (28 U.S.C. § 636(b)(1)(C) (1982)):

Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.

In this case, the Court granted Petitioner an extension of time to file any objections (Doc. No. 19). This extended the time for objections until October 5, 2009. The period for objections has elapsed and no objections have been filed. The failure to file written objections constitutes a waiver of a *de novo* determination by the district court of issues covered in the report. *United States v. Sullivan*, 431 F.3d 976, 984 (2005).

The Court adopts the Magistrate Judge's Report and Recommendation (Doc. No. 17) in its entirety. Petitioner's Petition for Writ of Habeas (Doc. No. 1) is dismissed.

Petitioner has failed to show the existence of any set of facts upon which he could prevail. Accordingly, under 28 U.S.C. § 1915(a), the Court certifies that an appeal of this action could not be taken in good faith. Further, as Petitioner has failed to make a substantial showing of the denial of a constitutional right, the Court will not issue a certificate of appealability.

IT IS SO ORDERED.

s/ *Jack Zouhary*
JACK ZOUHARY
U. S. DISTRICT JUDGE

October 13, 2009